

**ESTATES—RIGHTS OF SURVIVING SPOUSE AND
LEGITIMATED CHILDREN****CHAPTER 24****H. B. No. 648**

An Act relating to the inheritance rights of legitimated children and conforming various sections of the Texas Probate Code to the equal rights law.

Be it enacted by the Legislature of the State of Texas:

Section 1. Section 270, Texas Probate Code, is amended²⁵ to read as follows:

Sec. 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon, or work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of both spouses given in the same manner as required in making a sale and conveyance of the homestead.

Sec. 2. Section 271, Texas Probate Code, is amended²⁶ to read as follows:

Sec. 271. Exempt Property to be Set Apart

Immediately after the inventory, appraisalment, and list of claims have been approved, the court shall, by order, set apart for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased, all such property of the estate as is exempt from execution or forced sale by the constitution and laws of the state.

Sec. 3. Section 272, Texas Probate Code, is amended²⁷ to read as follows:

Sec. 272. To Whom Delivered

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children and unmarried children, if any, living with the family.

Sec. 4. Section 273, Texas Probate Code, as amended, is amended²⁸ to read as follows:

Sec. 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the

25. V.A.T.S. Probate Code, § 270.

26. V.A.T.S. Probate Code, § 271.

27. V.A.T.S. Probate Code, § 272.

28. V.A.T.S. Probate Code, § 273.

Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Ten Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the surviving spouse and minor children which is hereinafter provided for.

Sec. 5. Section 274, Texas Probate Code, is amended ²⁹ to read as follows:

Sec. 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse or children, if they be of lawful age, or their guardian if they be minors, shall choose to take at the appraisement, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Sec. 6. Section 275, Texas Probate Code, is amended ³⁰ to read as follows:

Sec. 275. To Whom Allowance Paid

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows: (a) If there be a surviving spouse and no children, or if all the children be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be paid to and equally divided among them if they be of lawful age, but if any of such children are minors, their shares shall be paid to their guardian or guardians.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid to the children of whom the survivor is not the parent, or, if they are minors, to their guardian.

Sec. 7. Section 276, Texas Probate Code, is amended ³¹ to read as follows:

Sec. 276. Sale to Raise Allowance

If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Sec. 8. Section 277, Texas Probate Code, is amended ³² to read as follows:

Sec. 277. Preference of Liens

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property,

29. V.A.T.S. Probate Code, § 274.

30. V.A.T.S. Probate Code, § 275.

31. V.A.T.S. Probate Code, § 276.

32. V.A.T.S. Probate Code, § 277.

or appropriated to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

Sec. 9. Section 279, Texas Probate Code, is amended ³³ to read as follows:

Sec. 279. When Estate is Insolvent

Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

Sec. 10. Section 280, Texas Probate Code, is amended ³⁴ to read as follows:

Sec. 280. Exempt Property Not Considered in Determining Solvency

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

Sec. 11. Section 282, Texas Probate Code, is amended ³⁵ to read as follows:

Sec. 282. Nature of Homestead Property Immaterial

The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

Sec. 12. Section 283, Texas Probate Code, is amended ³⁶ to read as follows:

Sec. 283. Homestead Rights of Surviving Spouse

On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.

Sec. 13. Section 284, Texas Probate Code, is amended ³⁷ to read as follows:

Sec. 284. When Homestead Not Partitioned

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

Sec. 14. Section 285, Texas Probate Code, is amended ³⁸ to read as follows:

Sec. 285. When Homestead Can Be Partitioned

When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned

33. V.A.T.S. Probate Code, § 279.

34. V.A.T.S. Probate Code, § 280.

35. V.A.T.S. Probate Code, § 282.

36. V.A.T.S. Probate Code, § 283.

37. V.A.T.S. Probate Code, § 284.

38. V.A.T.S. Probate Code, § 285.

among the respective owners thereof in like manner as other property held in common.

Sec. 15. Section 286, Texas Probate Code, is amended³⁹ to read as follows:

Sec. 286. Family Allowance to Surviving Spouses and Minors

Immediately after the inventory, appraisal, and list of claims have been approved, the court shall fix a family allowance for the support of the surviving spouse and minor children of the deceased.

Sec. 16. Section 287, Texas Probate Code, is amended⁴⁰ to read as follows:

Sec. 287. Amount of Family Allowance

Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse and minor children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

Sec. 17. Section 288, Texas Probate Code, is amended⁴¹ to read as follows:

Sec. 288. When Family Allowance Not Made

No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance.

Sec. 18. Section 290, Texas Probate Code, is amended⁴² to read as follows:

Sec. 290. Family Allowance Preferred

The family allowance made for the support of the surviving spouse and minor child of the deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of the deceased.

Sec. 19. Section 291, Texas Probate Code, is amended⁴³ to read as follows:

Sec. 291. To Whom Family Allowance Paid

The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children, if such children be the survivor's.

(b) If the surviving spouse is not the parent of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

(d) If there be a surviving spouse and no minor child or children, the entire allowance shall be paid to the surviving spouse.

39. V.A.T.S. Probate Code, § 286.

40. V.A.T.S. Probate Code, § 287.

41. V.A.T.S. Probate Code, § 288.

42. V.A.T.S. Probate Code, § 290.

43. V.A.T.S. Probate Code, § 291.

Sec. 20. Section 292, Texas Probate Code, is amended⁴⁴ to read as follows:

Sec. 292. May Take Property for Family Allowance

The surviving spouse, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Sec. 21. Section 293, Texas Probate Code, is amended⁴⁵ to read as follows:

Sec. 293. Sale to Raise Funds for Family Allowance

If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisement, and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Sec. 22. Section 109(a), Texas Probate Code, as amended, is amended⁴⁶ to read as follows:

(a) **Natural Guardians.** If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents, which may be either the father or the mother, is entitled to be appointed guardian of their estates. In event of disagreement as to which parent shall be appointed, the court shall make the appointment on the basis of which one is the better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children, and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, the interest of the children alone being considered.

Sec. 23. Section 176, Texas Probate Code, is amended⁴⁷ to read as follows:

Sec. 176. Remarriage of Surviving Spouse

The remarriage of a surviving spouse shall not terminate the surviving spouse's powers or liabilities as a qualified community administrator or administratrix; nor shall it terminate his or her powers as a surviving partner.

Sec. 24. Section 199, Texas Probate Code, is amended⁴⁸ to read as follows:

Sec. 199. Bonds of Married Persons

When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

44. V.A.T.S. Probate Code, § 292.

47. V.A.T.S. Probate Code, § 176.

45. V.A.T.S. Probate Code, § 293.

48. V.A.T.S. Probate Code, § 199.

46. V.A.T.S. Probate Code, § 109, subsec.

(a).

Sec. 25. Section 42, Texas Probate Code, as amended,⁴⁹ is amended to read as follows:

Sec. 42. Inheritance Rights of Legitimated Children

(a) **Maternal Inheritance.** For the purpose of inheritance, a child is the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) **Paternal Inheritance.** For the purpose of inheritance, a child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother or is legitimated by a court decree as provided by Chapter 13 of the Family Code, or if the father executed a statement of paternity as provided by Section 13.22 of the Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(c) **Homestead Rights, Exempt Property, and Family Allowances.** A legitimate child as provided by Subsections (a) and (b) of this section is a legitimate child of his mother, and a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) **Marriages Null in Law.** The issue also of marriages deemed null in law shall nevertheless be legitimate.

Sec. 26. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on February 22, 1979, by a non-record vote; passed by the Senate on March 19, 1979: Yeas 30, Nays 0.

Approved March 22, 1979.

Effective Aug. 27, 1979, 90 days after date of adjournment.

⁴⁹ V.A.T.S. Probate Code, § 42.